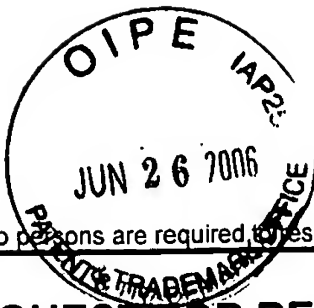


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PTO/SB/33 (07-05)

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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

20717

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on 21 June 2006

Signature Christine E. Benter

Typed or printed name Christine E. Benter

Application Number

10/689,478

Filed

20 October 2003

First Named Inventor

Daniel S. Papenfuss

Art Unit

1772

Examiner

Marc A. Patterson

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☐ attorney or agent of record.  
Registration number \_\_\_\_\_

☒ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 51,457

Christine E. Benter

Signature

Christine E. Benter

Typed or printed name

(920) 303-7970

Telephone number

21 June 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Application Number:** 10/689,478

**Examiner:** Marc A. Patterson

**Applicant:** Daniel S. Papenfuss, et al.

**Art Unit:** 1772

**Filing Date:** 20 October 2003

**Title:** Tear Initiation and Directional Tear Films and Packages Made Therefrom

**Customer Number:** 30482

**Docket Number:** 20717



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Signature: Christine E. Benter

Registration Number: 51,457

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**SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following comments are in support of the Pre-Appeal Brief Request for Review submitted in the above-referenced application. Applicant respectfully submits that clear errors are present in the Examiner's rejections, that the rejections should be withdrawn and that the claims should be allowed.

**Status of Claims**

The above-referenced application includes Claims 1-67. Each claim includes a flexible multilayer packaging film comprising a first film layer, a second film layer, a third film layer and a fourth film layer. The external surface of the first film layer comprises a surface-roughened portion, and the external surface of the fourth film layer comprises at least one

score-line. The limitation of a first film layer with a surface-roughened portion in combination with a fourth film layer with a score-line is present in each claim of this application.

In the July 1, 2005 Office Action and again in the March 22, 2006 Office Action, Claims 1-4, 6-13 and 17-23 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent 5,874,155 to Gehrke, et al. ("Gehrke et al."); Claim 5 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gehrke et al.; and Claims 14-16 and 24-67 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gehrke et al. in view of U.S. Patent 5,783,266 to Gehrke ("Gehrke"). (Gehrke appears to be relied upon solely for disclosure regarding a metallic coating.)

#### Gehrke et al. Reference

The June 8, 2006 Advisory Action states,

Applicant argues, on page 16 [of applicant's Amendment Under 37 C.F.R. §1.116 filed May 22, 2006], that Gehrke et al only disclose one layer with roughening, knurling, nicks or cuts. However, because Gehrke et al disclose a layer with roughening, knurling, nicks or cuts and disclose multilayer films comprising the layers, Gehrke et al disclose a multilayer film in which each layer has roughening, knurling, nicks or cuts.

The applicant respectfully submits that the Examiner's characterization of Gehrke et al. is a clear factual error. Gehrke et al do not disclose a multilayer film in which each layer has roughening, knurling, nicks or cuts. As such, the Examiner has failed to show how Gehrke et al. discloses the limitation of a first film layer with a surface-roughened portion in combination with a fourth film layer with a score-line, as present in this application.

Gehrke et al. disclose a packaging material including **one outer film layer** which is knurled, roughened, nicked or cut. No other layers in the Gehrke et al. packaging material are knurled, roughened, nicked or cut. Gehrke et al. clearly disclose only one knurled layer. Applicant's remarks in the May 22, 2006 Amendment Under 37 C.F.R. § 1.116 at pages 14 to 17 state as such. A summary of these remarks as well as additional evidence that Gehrke et al. disclose only one knurled film layer follows.

Column 2 lines 32-37 define the invention as a package wherein substantially the entire area of the **outer** layer is knurled. Only one layer, the outer layer, is knurled. Column 2 lines 40-41 further explain, "[T]he entire **surface** area of the package is roughened or knurled." Column 3 lines 5-8 explain that the knurled film or laminate is used as the **outer**

layer of the package. Column 3 lines 25-40 provide that the knurled film or laminate may be used in a multilayer film; the multilayer film is, in one embodiment, one knurled film layer with a single layer or multilayer sealant film and, in an alternative embodiment, one knurled film layer with a single layer or multilayer sealant film and foil. There is no mention or suggestion of including another knurled layer in addition to an outer knurled layer. That is not the manner in which the easy-opening feature of Gehrke et al. functions or is expected to function.

The fact that Gehrke et al. disclose only one knurled film layer is further illustrated by the Figures. Figure 1 presents a top view of the invention, showing knurling on the **surface** area of one sheet. Figures 2 and 3 show knurling imparted to a single layer film. Column 5 lines 46-51 explain that the single layer film, "having been subjected to roughening or knurling over substantively the entire **surface** area of the film," may then be laminated to a single layer or multilayer sealant film. Accordingly, such lamination has only one knurled layer. Column 5 lines 26-33 explain that knurling may also be imparted to a multilayer film with a first layer of a base polymer sealed to a second layer of a coating or sealant film; the **outer surface** of the base polymer is knurled. Again, only one layer, the outer layer, is knurled.

Figure 4 shows a process of lamination. Column 6 lines 9-11 disclose a first embodiment film structure of the lamination as knurled **surface** layer / adhesive / sealant layer. (In referring to film structure, a slash "/" is used to indicate that components to the left and the right of the slash are in different layers; the relative position of the layers is also indicated by use of the slash as an indicator of film layer boundaries.) Column 6 lines 18-25 disclose a second embodiment film structure of the lamination as knurled **surface** layer / adhesive / foil / adhesive / sealant layer.

Figures 5-11 and Examples 1-3 present various representations of the invention. In each of these, only one layer, an outer layer, is knurled. Figure 5 shows a first example of the first embodiment of the invention, with a film structure of knurled **surface** layer / adhesive / sealant layer. Figure 6 shows a second example of the first embodiment of the invention, with a film structure of knurled **surface** layer / adhesive / abuse-resistant layer / adhesive / oxygen barrier layer / adhesive / sealant layer. Figure 7 shows a first example of the second embodiment of the invention, with a film structure of knurled **surface** layer / adhesive / foil / adhesive / sealant layer. Figure 8 shows a second example of the second embodiment of the invention, with a film structure of knurled **surface** layer / adhesive / foil / adhesive / abuse-resistant layer / adhesive / barrier layer / adhesive / sealant layer. Figures 9-11 show the knurled surface layer as the **outer** layer of three different packages with the knurled laminate of the invention. Example 1 discloses a film structure of knurled OPP /

reverse printing / adhesive / sealant as blend of EVA and LLDPE. Example 2 discloses a film structure of knurled OPP / adhesive / foil / adhesive / LDPE sealant. Example 3 discloses a film structure of knurled PET / adhesive / foil / adhesive / LDPE sealant. In each and every one of the Figures and the Examples, only one layer is knurled. No other layers, other than the outer layer, are knurled, roughened, nicked or cut.

### Conclusion

Gehrke et al. do not, directly or indirectly, disclose, contemplate or suggest that each layer, or even more than the outer layer, of the film structure is knurled, roughened, nicked or cut to provide an easy-opening feature. The applicant respectfully submits that the Examiner's rejections of Claims 1-67 of the above-referenced application based on Gehrke et al. are clearly improper based upon errors in the facts of Gehrke et al. Therefore, the Examiner has failed to show how Gehrke et al. discloses the limitation of the above-referenced application of a first film layer with a surface-roughened portion in combination with a fourth film layer with a score-line.

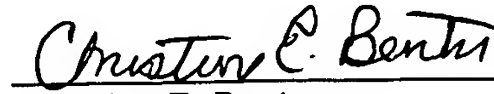
"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).) Additionally, "[t]he elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required." (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).) Gehrke et al. do not disclose each and every element present in and arranged as required by Claims 1-4, 6-13 and 17-23. Therefore, the applicant respectfully submits that these claims are patentable over Gehrke et al. Furthermore, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." (M.P.E.P. §2143.03 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).) Gehrke et al. do not teach or suggest all the limitations of Claim 5, and the combination of Gehrke et al. and Gehrke (apparently relied upon solely for disclosure regarding a metallic coating) does not teach or suggest all the limitations of Claims 14-16 and 24-67. Therefore, the applicant respectfully submits that these claims are patentable over Gehrke et al. or Gehrke et al. in view of Gehrke.

The applicant respectfully submits that Claims 1-67 are patentable. The rejections should be withdrawn and the claims should be allowed.

If a telephone conference would expedite review of this application and/or allowance of the claims, the applicant may be contacted via applicant's attorney at (920) 303-7970.

Respectfully submitted,

Date: June 21, 2006



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